

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 4972-02  
Bill No.: Perfected HB 1642  
Subject: Employees - Employers; Taxation and Revenue - General; Labor and Industrial Relations, Department of; Labor and Management  
Type: Original  
Date: March 26, 2014

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Bill Summary: This proposal would create the Employee Reclassification Act, and would modify provisions related to employment taxes.

**FISCAL SUMMARY**

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
<b>Total Estimated Net Effect on General Revenue Fund</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

Numbers within parentheses: ( ) indicate costs or losses.

This fiscal note contains 8 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2015</b>	<b>FY 2016</b>	<b>FY 2017</b>
Unemployment Compensation Administration	(Unknown)	(Unknown)	(Unknown)
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>(Unknown)</b>	<b>(Unknown)</b>	<b>(Unknown)</b>

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>			
<b>FUND AFFECTED</b>	<b>FY 2015</b>	<b>FY 2016</b>	<b>FY 2017</b>
<b>Total Estimated Net Effect on FTE</b>	<b>0</b>	<b>0</b>	<b>0</b>

☐ Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).

☐ Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2015</b>	<b>FY 2016</b>	<b>FY 2017</b>
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

## FISCAL ANALYSIS

### ASSUMPTION

Officials from the **Office of the Secretary of State (SOS)** assume many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this fiscal note to the Secretary of State's Office for Administrative Rules is less than \$2,500. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, we also recognize that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what our office can sustain with our core budget. Therefore, we reserve the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

Officials from the **Joint Committee on Administrative Rules** assume that this proposal would not have a fiscal impact to their organization in excess of existing resources.

Officials from the **Office of the Attorney General** assume that any potential costs arising from this proposal could be absorbed with existing resources.

Officials from the **Office of Administration - Office of the Commissioner** deferred to the **Office of Administration - Division of Budget and Planning** for an estimate of the fiscal impact of this proposal.

Officials from the **Office of Administration - Division of Budget and Planning (BAP)** assume this proposal would not result in any additional costs or savings to their organization.

Officials from the **Department of Labor and Industrial Relations (DOLIR)** assume this proposal would create the "Employee Reclassification Act".

DOLIR officials stated the United States Department of Labor (USDOL) has informally reviewed this bill and has determined it raises several conformity issues with federal law.

ASSUMPTION (continued)

DOLIR officials noted the federal and state governments are jointly responsible for administering the unemployment insurance (UI) system, and state laws must meet certain federal requirements for the state agency to receive the administrative grants needed to operate its UI program and for employers to qualify for certain tax credits.

Non-conformity with federal law could jeopardize the certification of Missouri's UI program. If the program fails to be certified, DOLIR would lose approximately \$40 million in federal funds the state receives each year to administer the UI program. Additionally, DOLIR would lose the approximately \$13 million in federal funds each year the Department of Economic Development - Division of Workforce Development uses for Wagner-Peyser reemployment services.

DOLIR officials stated the Federal Unemployment Tax Act (FUTA) imposes a 6.0 percent payroll tax on employers. Most employers never actually pay the total 6.0 percent due to credits they receive for the payment of state unemployment taxes and for paying reduced rates under an approved experience rating plan. FUTA allows employers tax credits up to a maximum of 5.4 percent against the FUTA payroll tax if the USDOL's Secretary of Labor approves the state's UI law. However, if this proposal would cause Missouri's program to be out of compliance or out of conformity, Missouri employers would pay the full 6.0 percent, or approximately an additional \$880 million per year.

DOLIR officials outlined the potential nonconformity issues in their response. In addition to a number of technical issues related to payments to certain licensed professions and corporations, the proposal would require DOLIR to provide an opinion letter as to the classification of an individual; if DOLIR later determined the individual was incorrectly classified by the employer based on the DOLIR opinion letter, DOLIR could not add penalties or additions to tax for that employer.

DOLIR officials noted DOLIR does not currently have a process for the creation of opinion letters. This bill would require the DOLIR to conduct an investigation prior to providing an opinion letter to an employer. It is unclear how this process would work when a business requests an 'opinion' prior to actually bringing on workers.

ASSUMPTION (continued)

In addition, DOLIR officials noted the proposal does not provide for situations in which the relationship changed after the opinion letter was issued. Thus, under this bill, the DOLIR could issue an opinion letter based upon application of the law at that time and determine employment at a later date based upon a new investigation/audit. In this situation, the DOLIR would be obligated to forgive any additional tax, interest, etc. owed as a result of misclassification.

**Oversight** assumes the proposal could be implemented in a way that does not conflict with federal technical requirements; however, Oversight notes that DOLIR would likely incur additional administrative cost to develop and operate an opinion letter process. Oversight has no information regarding the frequency of opinion letter requests nor the number and cost of investigations that DOLIR would be required to conduct. Oversight will assume for fiscal note purposes these costs would be allowable under federal provisions, and will include unknown additional costs to the Unemployment Compensation Administration Fund for the development and operation of the opinion letter function.

**Oversight** notes that if those costs are not allowable under federal provisions, resources would be required from the state General Revenue Fund.

Officials from the **Office of State Courts Administrator** assume this proposal would have no fiscal impact on their organization.

**Oversight** assumes there would be no other impact on the state or on local governments.

FISCAL IMPACT - State Government

FY 2015  
(10 Mo.)

FY 2016

FY 2017

**UNEMPLOYMENT  
COMPENSATION  
ADMINISTRATION FUND**

Cost - DOLIR

Employee classification opinion letters  
and investigations

(Unknown)

(Unknown)

(Unknown)

**ESTIMATED NET EFFECT ON  
UNEMPLOYMENT  
COMPENSATION  
ADMINISTRATION FUND**

**(Unknown)**

**(Unknown)**

**(Unknown)**

FISCAL IMPACT - Local Government

FY 2015  
(10 Mo.)

FY 2016

FY 2017

**\$0**

**\$0**

**\$0**

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

### FISCAL DESCRIPTION

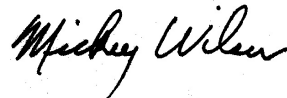
This proposal would create the Employee Reclassification Act, and would modify provisions related to employment taxes.

The proposal would create a presumption that payments to certain individuals and other entities would be considered payments to an independent contractor and not to an employee. The proposal would prohibit the assessment of penalties for misclassification under certain circumstances, and would require the Department of Labor and Industrial Relations to develop a process to provide opinion letters for employers as to the status of certain payments.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

### SOURCES OF INFORMATION

Office of State Courts Administrator  
Office of the Secretary of State  
Joint Committee on Administrative Rules  
Office of the Attorney General  
Office of Administration  
    Office of the Commissioner  
        Division of Budget and Planning  
Department of Labor and Industrial Relations



Mickey Wilson, CPA  
Director  
March 26, 2014

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